

Remarks

Claims 189-200 are pending in the above-captioned application. As suggested by the Examiner, claims 194 and 200 have been reworded to recite a composition comprising the isolated polypeptide of either claim 189 or 195 and a pharmaceutically acceptable carrier or excipient. Support for this amendment is found in the specification as filed.

Accordingly, no new matter has been introduced and entry of this amendment is respectfully solicited.

I. Double Patenting Rejections

a. The Examiner has rejected claims 189-200 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 62-65 of U.S. Patent 6,077,692. In particular, the Examiner alleges that the conflicting claims are not patentably distinct because “the instant claims are directed to a genus of molecules which are anticipated by the species of Ser (69)-Ser (208) of SEQ ID NO:2.” *See*, page 3, first paragraph.

Although Applicants do not acquiesce to the instant rejection, in the interest of facilitating prosecution, Applicants have submitted a terminal disclaimer over U.S. Patent 6,077,692. Accordingly, Applicants respectfully request the Examiner to withdraw this rejection.

b. The Examiner has also provisionally rejected claims 189-200 under the judicially created doctrine of obvious-type double patenting over claims 95-102 of co-pending U.S. Application No. 10/075,446. In particular, the Examiner alleges that the subject matter encompassed by the ‘446 application “significantly overlaps” with the subject matter of the instant invention. *See*, paragraph spanning pages 3-4.

Without acquiescing to this rejection, Applicants note that this rejection should be the only rejection remaining in this application upon entry of the present amendment. Accordingly, pursuant to M.P.E.P. § 804, the rejection should be withdrawn and this case should proceed to issuance. Applicants will address the rejection, if necessary, in the ‘446 application.

II. Objections to Claims

The Examiner has objected to claims 194 and 200 as being of improper dependent form. In particular, the Examiner alleges that "the recitation of 'together with a pharmaceutically acceptable carrier or excipient' fails to further limit the subject matter of the 'isolated polypeptide.'" See, page 4, first paragraph.

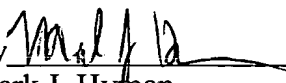
Applicants respectfully disagree. However, as suggested by the Examiner, Applicants have rewritten claims 194 and 200 to recite a composition comprising the isolated polypeptide of either claim 189 or 195 and a pharmaceutically acceptable carrier or excipient. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw this objection.

Conclusion

Applicants respectfully request that the above-made remarks and amendments be entered and made of record in the file history of the instant application. In view of the foregoing remarks, Applicants believe that this application is now in condition for allowance, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the allowance of this application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: May 25, 2004

Respectfully submitted,

By 
Mark J. Hyman
Registration No.: 46,789
HUMAN GENOME SCIENCES, INC.
14200 Shady Grove Road
Rockville, Maryland 20850
(240) 314-1224

MMW/MJH/KC/lcc